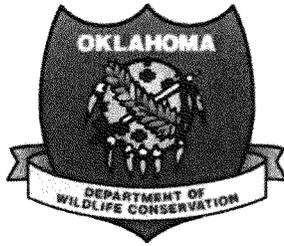


**FILED**

AUG 31 2016

OKLAHOMA SECRETARY  
OF STATE



# **MEMORANDUM OF UNDERSTANDING BETWEEN THE CHOCTAW NATION AND THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION**

## **ARTICLE I PURPOSE AND INTENT OF THE PARTIES**

WHEREAS, the State of Oklahoma ("State"), by and through its Governor, Mary Fallin, and the Choctaw Nation of Oklahoma ("Nation"), by and through its Chief, Gary Batton, executed a Hunting and Fishing Compact ("Compact") on August 30<sup>th</sup>, 2016;

WHEREAS, both the State and the Nation agreed in the Compact that the Oklahoma Department of Wildlife Conservation ("ODWC") and the Nation would execute a separate agreement for the maintenance and operation of Lake Nanih Waiya;

WHEREAS, the Oklahoma Department of Wildlife Conservation currently owns, operates, manages, and maintains Lake Nanih Waiya;

WHEREAS, Lake Nanih Waiya is a place of historical significance to the Nation. In the Choctaw language, Nanih Waiya means mother mound, representing the giver of life. Nanih Waiya Mound, Mississippi is the location of the Choctaw people's creation. Choctaw Oral Tradition tells us that Choctaw citizens brought bone bundles and dirt from their creation site of Nanih Waiya and created a mound near the original Choctaw Capital of Nanih Waiya, which is in close proximity to Lake Nanih Waiya. This is where the Choctaw's first constitution was written and adopted after the removal of the people of the Choctaw Nation.

WHEREAS, the Nation would like to obtain ownership of Lake Nanih Waiya. In furtherance of this effort the Nation will pursue all available options and would like for the State and the ODWC to assist the Nation in its efforts to the extent possible;

WHEREAS, ODWC has the authority to enter into Memorandum's of Understanding pursuant to Sections 3-103 and 3-105 of Title 29 of the Oklahoma Statutes;

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WHEREAS, the Nation has the authority to enter this MOU pursuant to the Constitution of the Choctaw Nation of Oklahoma which vests the power and authority in the Legislative and Executive branches of the Nation to enter into cooperative agreements with the State;

WHEREAS, both the State and the Nation recognize that pursuant to applicable law, each is a sovereign with dominion over its respective government. Entry into this MOU is not intended nor shall it be construed to cause the sovereignty of either to be diminished or expanded;

## **ARTICLE II RESPONSIBILITIES OF THE PARTIES**

NOW, THEREFORE, in consideration of the foregoing, the Director of the Oklahoma Department of Wildlife Conservation and the Chief of the Choctaw Nation of Oklahoma express their understanding and agreement as follows:

1. The Nation agrees to maintain Lake Nanih Waiya in the same manner and on the same schedule as the ODWC maintains Lake Nanih Waiya pursuant to the Management Plan in effect for this fiscal year. (Attached herein as Exhibit A).
2. The ODWC agrees to the following:
  - a. To provide the Nation with education, training and guidance as reasonably necessary to ensure the successful management of Lake Nanih Waiya.
  - b. Communicate with the Nation prior to undertaking any improvements beyond the types of maintenance duties listed in Exhibit A.
3. The Nation and ODWC ("the parties") agree to the following:
  - a. The parties shall meet annually to discuss the maintenance and management of Lake Nanih Waiya, including any potential renovation projects are permanent improvement.
  - b. The management of the wildlife resources in and around Lake Nanih Waiya shall continue to be the sole responsibility of the ODWC. This includes, but is not limited to, the annual stocking of fish in the Lake. Nothing contained herein shall prevent the ODWC from entering into additional agreements with the Nation relating to the management of the wildlife resources.

## **ARTICLE III GENERAL PROVISIONS**

- 1) Any dispute arising in the interpretation or performance of this MOU, which is not resolved by good faith negotiation within thirty (30) days, or such longer period as

mutually agreed in writing by both parties, may be subject to the following exclusive remedies: (1) voluntary unilateral termination by either party, after having provided sixty (60) days' written notice in accordance with Article III, Part 6, below; or (2) legal proceedings in federal district court in the Western District of Oklahoma, but only for the limited purpose of seeking injunctive and/or declaratory relief for the enforcement of the provisions of this MOU. Each party hereto expressly agrees that it shall not assert, directly or indirectly, any immunity to any action filed in accordance with this Article III, Part 1 and agrees, furthermore, not to raise the Eleventh Amendment to the United States Constitution or comparable defense to the validity of such limited waiver.

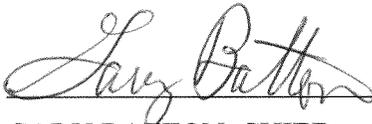
- 2) This MOU shall begin on January 1, 2017, and terminate on December 31, 2019. Nothing in this MOU shall prevent the parties by mutual agreement from establishing an earlier or later termination date or otherwise modifying this agreement.
- 3) The Nation does not concede that the laws of the State of Oklahoma apply to the Nation or its members regarding activities and conduct that occur on any of the Nation's tribal lands under the trusteeship of the United States.
- 4) This MOU shall not alter tribal, federal, or state civil adjudicatory or criminal jurisdiction.
- 5) Neither party shall be deemed the drafter of this MOU in the event of any action to interpret its terms. Therefore, the rule of construction that in the case of an ambiguity, the ambiguity is construed against the author is not applicable. Furthermore, any rule of construction of ambiguities either in favor of or against a state or tribal governmental entity is not applicable to this MOU.
- 6) Notice shall be by United States mail, postage prepaid. Any notice required hereunder to the ODWC shall be delivered to the Director of the Oklahoma Department of Wildlife Conservation at P.O. Box 53465, Oklahoma City, Oklahoma 73152. Notification by the State shall be made by the Director or their designee in writing to the Chief of the Choctaw Nation, at P.O. Box 1210, Durant, Oklahoma 74702-1210.
- 7) This MOU shall become effective when fully executed by all parties.
- 8) Nothing in this MOU shall be deemed to authorize the State to regulate the Nation's government or to interfere in any way with the Nation's election of its governmental officers.
- 9) This MOU is intended to be between and for the benefit of the Nation and the State only. This MOU is not intended for the benefit of third-parties and creates no rights, remedies, or standing for third-parties.
- 10) This MOU comprises the entirety of the agreement between the parties hereto. Any and all prior or contemporaneous representations, predictions, warranties, or other inducements, however denominated, are merged within the terms of this MOU, and shall not survive its execution. There are no representations, promises, predictions, warranties,

inducements, or other agreements, however denominated, between the parties other than as set forth herein. This MOU may not be amended or modified except by written agreement, approved and executed by the parties hereto.

IT IS AGREED:

Each of the undersigned represents that they are duly authorized, and has the authority, to execute this Memorandum of Understanding on behalf of the designated party.

**CHOCTAW NATION**



GARY BATTON, CHIEF

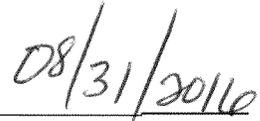


DATE

**OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION**



RICHARD HATCHER, DIRECTOR



DATE

ATTACHMENT "A"  
LAKE NANIH WAIYA MAINTENANCE SCHEDULE

1. The following maintenance projects shall be conducted by the Nation under the guidance and supervision of the ODWC:
  - a. Application of herbicide on jetties to control vegetation – once per year in May.
  - b. General road maintenance (new gravel, road grating) – once per year in June.
  - c. Trash removal – twice per month January thru December.
  - d. Mowing – once per month May thru October.